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*Attorneys for Plaintiffs Donald Wortman, Williams Adams  
and Margaret Garcia, and the Proposed Class*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**IN RE TRANSPACIFIC PASSENGER )  
AIR TRANSPORTATION )  
ANTITRUST LITIGATION )**

**Case No. 07-cv-05634-CRB**

**MDL No. 1913**

**This Document Relates to:  
ALL ACTIONS**

**DECLARATION OF  
JOSEPH W. COTCHETT  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR APPOINTMENT OF  
INTERIM LEAD COUNSEL**

**[FED. R. CIV. P. 23(g)]**

Date: March 28, 2008  
Time: 10:00 a.m.  
Judge: Hon. Charles R. Breyer

**DECLARATION OF JOSEPH W. COTCHETT ISO PLAINTIFFS' MOTION  
FOR APPOINTMENT OF INTERIM LEAD COUNSEL  
Case No. 07-cv-05634-CRB; MDL No. 1913**

1 I, Joseph W. Cotchett, declare as follows:

2 1. I am an attorney duly licensed by the State of California and am admitted to  
3 practice before this Court. I am a partner of the law firm of Cotchett, Pitre & McCarthy  
4 ("CPM"), attorneys of record for plaintiffs Donald Wortman, Williams Adams and Margaret  
5 Garcia. The matters set forth herein are within my personal knowledge, and if called and sworn  
6 as a witness I could competently testify regarding them. I make this declaration pursuant to 28  
7 U.S.C. § 1746.

8 **PRESENT LITIGATION**

9 2. On November 6, 2007, our firm, along with Engstrom, Lipscomb & Lack filed a  
10 complaint in the Northern District of California on behalf of our clients Donald Wortman,  
11 William Adams and Margaret Garcia. This complaint was the first complaint on file in any  
12 judicial district relating to the price fixing conspiracy of transpacific passenger flights by Air  
13 New Zealand, All Nippon Airways, Cathay Pacific Airways, China Airlines, Eva Airways,  
14 Japan Airlines International, Malaysia Airlines, Northwest Airlines, Qantas Airlines, Singapore  
15 Airlines, Thai Airways and United Airlines (collectively the "Defendants"). The firm has  
16 already put in substantial work towards identifying and investigating potential claims in this  
17 action, including travel to the Far East to investigate the factual background. Extensive research  
18 has been done in understanding the history, extent and nature of flight routes from the United  
19 States to the Asia Pacific region as well as learning about the relationships, trade associations  
20 and communications between the Defendants that led to the alleged conspiratorial conduct of  
21 the Defendants. Substantial effort has also been undertaken to develop and analyze the facts  
22 that led to the initiation of investigations regarding alleged conspiratorial misconduct over  
23 transpacific air passenger routes. These facts will prove that there has been the fixing of prices  
24 on air passenger flights between the United States and the Asia Pacific region on certain air  
25 routes.

1           3.       The complaint alleged that during the time period from at least 2004 to August  
2 2007, the Defendants engaged in a conspiracy to manipulate the price charged for airline tickets  
3 for transpacific passenger flights. Attached as Exhibit A is a true and correct copy of the  
4 complaint.

5           4.       Since then, a number of law firms have followed with similar or identical  
6 complaints relating to the alleged price fixing conspiracy of transpacific passenger flights.  
7 These complaints were filed in either the Northern District of California and the Central District  
8 of California.

9           5.       On November 15, 2007, CPM filed a motion with the Judicial Panel of  
10 Multidistrict Litigation to transfer and consolidate the transpacific air passenger class actions to  
11 the Northern District of California.

12           6.       The Cotchett firm has already moved to serve the defendants located outside the  
13 United States through the Hague Convention and through the Letter Rogatory process. To  
14 accomplish service on the defendants, on January 14, 2008, the Cotchett firm obtained from  
15 this Court an **Order for Designation of a Placeholder Complaint and Summons** so that  
16 certain portions of the complaint can be removed to comply with foreign laws and diplomatic  
17 protocols. A true and correct copy of the order is attached hereto as Exhibit B.

18           7.       On February 19, 2008, the Judicial Panel on Multidistrict Litigation issued a  
19 Transfer Order. Attached as Exhibit C is a true and correct copy of that Transfer Order. The  
20 Transfer Order held that transfer to the Honorable Charles R. Breyer in the Northern District of  
21 California is appropriate as (1) all responding parties agree that the Northern District of  
22 California is a suitable transferee district; (2) one constituent action and thirteen potential tag-  
23 along actions are already pending there; and (3) Judge Charles R. Breyer has the experience to  
24 steer this docket on a prudent course. The Transfer Order also held that thirteen potentially  
25 related actions in the Northern District of California will be treated as potential tag-along  
26 actions.

27       ///

**PRIOR SIMILAR LITIGATION**

8. On June 22, 2006, the first putative class actions was filed in the Northern District of California alleging price-fixing between British Airways and Virgin Atlantic Airways over surcharges and the pricing of airline tickets between the United States and the United Kingdom.

9. On October 25, 2006, the actions in *In re: International Air Transportation Surcharge Antitrust Litigation*, Case No. 06-1793 CRB, MDL No. 1793, were consolidated and transferred to the Northern District of California.

10. On December 18, 2006, Judge Breyer appointed the Cotchett law firm as one of two Co-Lead Class Counsel for the plaintiff class, finding that they were “best able to represent the interests of the class.”

11. As Co-Lead Class Counsel for the plaintiff class in the *In re: International Air Transportation Surcharge Antitrust Litigation*, CPM has reviewed voluminous documents produced from both British Airways and Virgin Atlantic and has developed significant experience regarding the airline industry and the relationship between surcharges and airline ticket prices.

12. On August 2, 2007, our firm, filed the first complaint in any judicial district relating to a price fixing conspiracy between Korean Air Lines Co. Ltd. (“Korean Air”) and Asiana Airlines, Inc. (“Asiana”) relating to passenger flights between the United States and the Republic of Korea. This case involved CPM conducted extensive research regarding the alleged antitrust conspiracy between Korean Air and Asiana.

**BACKGROUND OF CPM**

13. CPM has over 40 years of litigation and trial experience, and is widely recognized as one of the top law firms in the United States. The firm specializes in the prosecution of difficult and complicated antitrust, securities, and consumer fraud class action cases, and the firm has extensive experience in multidistrict litigation. CPM has taken hundreds of cases to trial, and the attorneys in the firm are widely recognized for their trial experience.

14. CPM is acknowledged by its peers for handling cases efficiently, effectively, and swiftly. This is one reason large public international investors, such as the California Teachers Retirement System, have selected the firm as counsel in some of their most important cases.

15. *The National Law Journal* has reported that the firm and its Founders are regarded by both plaintiff and defense attorneys as one of the foremost firms in the nation. I was the lead trial lawyer for 23,000 plaintiffs in the Lincoln Savings Loan Association/American Continental Corp. litigation in 1990 involving Charles Keating, attorneys, banks and accountants. The jury trial lasted four months and involved initially over 50 individual and entity **defendants**.

16. The author of this declaration is a Fellow of the American College of Trial Lawyers; The International Academy of Trial Lawyers; The International Society of Barristers and the American Board of Trial Advocates. I have served on the California State Bar Board of Governors, Public Citizen in Washington, D.C., and several State Commissions, including the Commission on Judicial Performance, and the State Judicial Council. I am a former Colonel in the Army Reserves in both JAG and Airborne Special Forces. I am the author of several books, including Federal Courtroom Evidence, California Courtroom Evidence and others. I have tried over 100 cases to verdict in the last 42 years in jurisdiction across the country.

17. Partner Nancy L. Fineman has over 20 years of experience litigating and trying complex cases. She holds leadership roles in the coordinated Natural Gas Antitrust Litigation brought by many of California's counties, universities, and cities pending in the San Diego Superior Court, and major litigation against Wachovia pending in the Central District of California. She serves as class counsel on behalf of the California State Teachers' Retirement System and the class in litigation against Homestore.com, and served as class counsel for cities and counties in lawsuits against PG&E arising out of franchise fee underpayments. She was on the Plaintiffs' Executive Committee for the Fen-Phen litigation and has represented numerous individuals and companies in both the prosecution and defense of complex cases.



1           18. Partner Steven N. Williams has over fifteen years of experience litigating  
 2 antitrust, securities, and consumer class actions. Mr. Williams served as lead or co-counsel in  
 3 several nationwide class actions, including *Kopies Inc., et al. v. Eastman Kodak Co.*, an antitrust  
 4 class action in the Northern District of California, *In re: Static Random Access Memory*  
 5 *Antitrust Litigation*, an antitrust class action in the Northern District of California, *In re: Flash*  
 6 *Memory Antitrust Litigation*, an antitrust class action in the Northern District of California, and  
 7 *In re: Air Cargo Shipping Services Litigation*, an MDL antitrust class action pending in the  
 8 Eastern District of New York, as well as playing a leading role in natural gas antitrust litigation  
 9 in state and federal courts in California. Mr. Williams has represented the California State  
 10 Teachers' Retirement System, helping recover substantial investment losses suffered by  
 11 California's public school teachers, and has represented the Chief Justice of California, Ronald  
 12 M. George, as well as the California Judicial Council and counties and cities throughout  
 13 California. Mr. Williams is admitted to practice before the State and Federal Courts of  
 14 California, New York, and New Jersey and the United States Supreme Court.

15           19. Partner Nanci E. Nishimura is an experienced trial lawyer with nearly twenty  
 16 years of experience practicing law. Nishimura has been a lecturer for the San Francisco Bar  
 17 Association and a member of the Los Angeles County Bar Association Litigation Section Trial  
 18 Practice Inn of Court. She has served in a leadership role in a number of complex class actions  
 19 cases and is also one of the lead attorneys in the coordinated Natural Gas Antitrust Litigation.  
 20 She serves on the State Bar Judicial Nominees Evaluation Commission and lectures on class  
 21 actions for the Women Lawyers Association of Los Angeles.

22           20. Principal Neil Swartzberg is an experienced antitrust lawyer with experience in  
 23 criminal law who is playing a key role as part of the leadership group in complex antitrust cases  
 24 such as *In re: Dynamic Random Access Memory (DRAM) Antitrust Litigation* and *In re: SRAM*  
 25 *Antitrust Litigation*.

26           21. Principal Douglas Y. Park is an experienced antitrust lawyer who plays a key role  
 27 in the economic analysis of complex antitrust cases such as *In re Flash Memory Antitrust*  
 28

1 *Litigation, In re SRAM Antitrust Litigation and In re: International Air Transportation*

2 *Surcharge Antitrust Litigation.* Park has a PhD in Business from Stanford University as well as  
3 a law degree from the University of Michigan. Park has been a professor of Management at the  
4 School of Business and Management, Hong Kong University of Science and Technology prior  
5 to attending law school.

6 22. Principal Aron K. Liang is an antitrust attorney who has been involved in  
7 prosecuting complex antitrust class action cases such as the *In re: SRAM Antitrust Litigation*  
8 and the *In re: Korean Air Lines Co., Ltd. Antitrust Litigation*.

9 23. CPM and its members have served in the past as lead or co-lead counsel in the  
10 following antitrust cases in the Northern District of California:

- 11 ● ***Kopies, Inc. et al v. Eastman Kodak Co.*** (N.D. Cal. Case No. 94-524 (SBA)).  
12 This antitrust class action by copier service firms against a parts manufacturer for  
13 illegal tying of products and services resulted in more than \$45 million in  
14 settlements.
- 15 ● ***In re Citric Acid Antitrust Litigation*** (N.D. Cal. Master Case No.95-2963  
16 (FMS), MDL No. 1092). This antitrust class action for fixing prices of citric acid  
17 resulted in over \$80 million in settlements for the direct purchasers of this  
18 food-additive product.
- 19 ● ***In re Sodium Gluconate Antitrust Litigation*** (N.D. Cal. Case Nos. 97-4142 and  
20 98-70 (CW), MDL No. 1226). This antitrust class action for price fixing of  
21 sodium gluconate, an industrial cleaning agent, resulted in a settlement on behalf  
22 of the class.
- 23 ● ***In re Methionine Antitrust Litigation*** (N.D. Cal. Master Case No. 00-1311  
24 (CRB), MDL No. 1311). This antitrust class action involving a conspiracy to fix  
25 prices for methionine resulted in over \$100 million in settlements.

26 20. CPM served on the plaintiffs' Steering Committee and was instructive in the  
27 settlement of:

- ***In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*** (N.D. Cal. Master Case No. 02-1486 (PJH), MDL No. 1486). This antitrust class action involving DRAM memory chip price-fixing resulted in more than \$300 million in settlements for the class.

21. CPM and its members are also currently acting as lead or co-lead counsel in several pending antitrust cases, such as:

- ***In re International Air Transportation Surcharge Antitrust Litigation*** (N.D. Cal. Case No. 06-1793 (CRB), MDL No. 1793). An MDL class action challenging the price-fixing of air passenger tickets. CPM is Co-Lead Counsel.
- ***In re Air Cargo Shipping Services Litigation*** (E.D.N.Y. Case No. 06-1775 (CBA), MDL No. 1775). An MDL class action challenging the price-fixing of air cargo shipments. CPM is Co-Lead Counsel for the indirect purchaser class.
- ***In re SRAM Antitrust Litigation*** (N.D. Cal. Case No. 06-6511 (CW), MDL No. 1819). An MDL class action challenging the price-fixing of SRAM memory chips. CPM is Interim Lead Class Counsel for the direct purchaser class.
- ***In re Flash Memory Antitrust Litigation*** (N.D. Cal. Case No. 07-0086 (SBA), MDL No. 0086). An MDL class action challenging the price-fixing of Flash memory. CPM is Interim Co-Lead Counsel for the indirect purchaser class.

#### **OTHER CLASS LITIGATION**

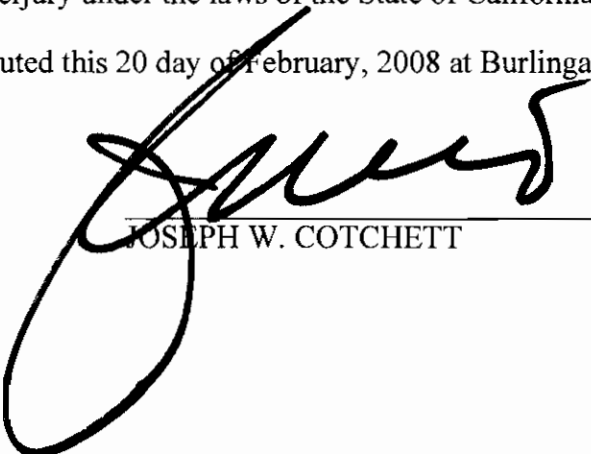
24. The law firm has had numerous class actions around the country and specifically in the Northern District. Without listing all of them, they can be summed up by a statement from the Court.

25. The Chief Judge of the Northern District of California, Vaughn Walker said of our firm in *Louisiana Pacific Corp*, MDL 1114:

“The Cotchett firm, in particular, has appeared before the court in other actions and performance of its attorneys to date in this and other cases is a testament to the ability of these attorneys.” Judge Walker’s Order, filed October 22, 1997.



1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct. Executed this 20 day of February, 2008 at Burlingame, California.

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6 JOSEPH W. COTCHETT  
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